IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 32 OF 2005

MR.AVERTANO ANTONIO JOSE FURTADO ....Appellants
AND ANR.,

Versus

STATE BANK OF INDIA,MARGAO GOA. ....Respondent

Shri J.E. Coelho Pereira, Senior Advocate with Shri V,Korgaonkar, Advocate for the Appellants.

Coram:- R. M. LODHA, J.

Date:- 29th September, 2005

P.C.:

Heard Mr. Pereira, the learned Senior Counsel for the appellants.

2. I have perused the Order dated 24th February, 2005 impugned in the present appeal.

3. The learned Senior Counsel submitted that the trial Court committed serious error in observing that the Alhali Bank of Kuwait was necessary party defendant in the suit. Needless to say that the observation made by the learned trial Court to that effect in paragraph 11 in the impugned judgment is only tentative and for the purpose of disposing of the application for interim mandatory injunction as prayed by the plaintiffs. The question whether the Alhali Bank of Kuwait was necessary party defendant in the suit will be finally decided by the trial Court while hearing the suit without being influenced by such observation made in the impugned order.

4. Having considered the matter, I am of the view that the trial Court cannot be said to have committed any error in rejecting the appellants'

application for interim mandatory injunction. Not only that, the plaintiffs failed to establish a strong prima facie case, but also there was no balance of convenience in favour of the plaintiffs for granting such relief. As a matter of fact, if the prayer made by the plaintiffs by means of the application (Exh.6) were granted, that would tantamount to decreeing the suit itself which could not have been done. Taking overall facts and circumstances of the case, the trial Court cannot be said to have erred in rejecting the plaintiffs' application for interim mandatory injunction.

5. The learned Senior Counsel for the appellants then submitted that the subject fixed deposits had expired on 18.9.02 and has not been renewed by the respondent-Bank. Suffice it to observe if the plaintiffs' claim is accepted and it is found that the defendant Bank unjustifiably withheld the plaintiffs' fixed deposits, the Court may award appropriate interest and the defendant-Bank shall be liable to make payment of the said amount to the plaintiffs.

6. With the aforesaid observations the appeal is dismissed in limine.

R. M. LODHA, J.

sl.